

## **AB 2296 Consulting Group**

### **Financial Assurances Phase II Rulemaking**

**California Integrated Waste Management Board  
Workshop  
July 9, 2009**



### **Agenda**

- Introductions and General Overview
- Options to Address the May 2009 Board Direction for Phase II Regulations on Closed/Closing Facilities
  - Postclosure Maintenance Financial Assurances
  - Corrective Action Financial Assurances
- Lunch Break
- Continuity of Financial Assurances During Transfer of Ownership
- Wrap Up and Next Steps

## Options to Address Postclosure Maintenance

### Closing/Closed

1. 30X the PCM estimate
  - a) Same as Operating – including criteria allowing step-down
  - b) Allow build up period for cash mechanisms
2. Not require increase (to 30X) above current demonstration level, no less than 15X
3. Perform Evaluation to set level  
(options to determine level?)
4. Some stakeholders requested that the closing and closed operators be allowed to draw-down on a year-for-year basis to 15X

3

## 1.a) Same as Operating – including criteria allowing step-down

### Pros:

- More Protective
- Minimal System Impact
- Equity
- Ease of Administration
- May Be Eligible for Step-down

### Cons:

- Increased Early Defaults
- Increased Enforcement
- Inability for Some to Raise Additional Funds
- Fairness – already closed and imposing additional financial demonstration requirement

4

## 1.a) Same as Operating – including criteria allowing step-down

### Pros:

### Cons:

- Disproportionate effect on rate paying communities
- Would cause additional rate increases
- Ties up resources that could be used beneficially elsewhere\*

\*  
CAW comment that beneficial use isn't certain  
Money might not go to alternatives  
Promotes continued subsidies to waste disposal

5

## 1.b) Allow Build Up Period for Cash Mechanisms

### Pros:

### Cons:

- Reduces Impact
  - Flexibility
  - Opportunity to Step-down
  - Reduced Enforcement
- Equity for cash vs. non-cash mechanisms
  - Not equitable to the rate paying community

6

## 2. Not require increase (to 30X) above current demonstration level, no less than 15X

### Pros:

- Mitigates Impact on Individual Landfills
- Fairness
- More fair to rate paying community

### Cons:

- Increase Exposure to State
- Equity for operating vs. closing/closed and for cash vs. non-cash

7

## 3. Perform Evaluation to Set Level – Not Less Than 15X

### Pros:

- Better Match Likelihood of Default and Level of Assurance

### Cons:

- High Transaction Costs for Operator and Board
- Criteria outside existing Mechanisms/program difficult to develop

8

## Options to Address Corrective Action

Closing/Closed

1. Same as Active/Operating
  - a) Immediately
  - b) Allow Build Up Period
2. Original Phase II Proposal – Broaden Use of Water Board Financial Assurance
3. Delay Effective Date For Final Cover Replacement
4. Site Specific Corrective Action Plan
5. Include Costs in Pooled Fund

9

## 1.a) Same as Active/Operating

### Pros:

- More Protective
- Minimal System Impact
- Equity
- Ease of Administration

### Cons:

- Increased Early Defaults
- Increased Enforcement
- Inability for Some to Raise Additional Funds
- Fairness – already closed and imposing additional financial demonstration requirement

10

## 1.a) Same as Active/Operating

### Pros:

### Cons:

- Directs resources away from other beneficial uses
- Disproportionate effects on rate paying community
- Ties up resources that could be used beneficially elsewhere\*

11

## 1.b) Allow Build Up Period

### Pros:

### Cons:

- May work well in Combination w/ Option 2 (next slide)
  - Reduces Impact
  - Flexibility
  - Reduced Enforcement
- Equity for cash vs. non-cash mechanisms
  - Directs resources away from other beneficial uses
  - Disproportionate effects on rate paying community
  - Ties up resources that could be used beneficially elsewhere\*

12

## 2. Original Phase II Proposal – Broaden Use of Water Board Financial Assurance

### Pros:

- Simple to Implement
- Minimal Financial Impact
- Equity
- Fairness

### Cons:

- Might not provide enough financial assurance to cover the exposure
- Doesn't address Major Maintenance

13

## 3. Delay Effective Date For Final Cover Replacement

### Pros:

- Incentivizes Closing landfills to be certified Closed (SD-4.2)

### Cons:

- Might not provide enough financial assurance to cover the exposure
- Doesn't address Major Maintenance

Not all landfills to comply with the cover compliance with the original Phase II proposal (using Water Board corrective action estimate for financial assurance purposes).

14

## 4. Site Specific Corrective Action Plan

### Pros:

- Recognizes potential for Major Maintenance
- Fairness

### Cons:

- Monetary Expense to Develop Plan
- Workload to Review Plans
- Equity Issue (unless also imposed on operating landfills)

15

## 5. Include Costs in Mandatory Pooled Fund(s)

### Pros:

- Would reduce the amount required for individual financial assurances

### Cons:

- There is no Pooled Fund(s) yet

- Pooled Fund(s)
  - Closed landfills allowed to count a year-for-year reduction now and draw-down to 15X
  - Operating landfills allowed to draw-down to 15X
- Spread costs across State
- Cover catastrophic failure across states at individual landfills
- Should cover currently closed landfills
- Introduces a moral hazard with less accountability for the individual landfill operator

16



## **Continuity of Financial Assurances During Transfer of Ownership**

- Stay at current landfill financial assurance requirement
  - *Pro – Would be useful (to the seller) with review of new owner by CIWMB*
  - *Con – New owner could be misled regarding ongoing costs.*
- Automatically step-up to 30X
  - *Pro – Would help protect the State*
  - *Con – Onerous requirement*
- Alternative “X” level
  - 5X increments
  - Based on what criteria?
    - *Pro – Flexibility is good, especially with review by CIWMB*